

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PATRICIO BORJA,

Plaintiff(s),

-against-

YRC, INC. and EDWARD LUCKEY,

Defendant(s).

Trial by Jury Demanded
of All Issues

VERIFIED ANSWER

DOCKET No.: 11 CV 1944

The defendant(s), YRC INC. I/S/H/ A YRC, INC. AND EDWARD LUCKEY, answering the
Complaint of the plaintiff(s) herein:

AS AND FOR THE FIRST CAUSE OF ACTION

FIRST: Admit each and every allegation in the paragraphs of the complaint
designated as follows: "5".

SECOND: Deny each and every allegation in the paragraphs of the complaint
designated as follows: "14", "16" and "18".

THIRD: Deny any knowledge or information sufficient to form a belief as to the
truth of any of the allegations contained in the paragraphs of the Complaint designated as
follows: "1" and "10".

FOURTH: Deny each and every allegation contained in the paragraphs of the
complaint designated as follows, and refer all questions of law to this Honorable Court: "15"
and "17".

FIFTH: Deny based on information and belief as to the truth of any of the
allegations contained in paragraphs "2", "3" and "4" of the plaintiff's complaint except to
admit that YRC INC. is a corporation formed under and by virtue of the laws of the State of

Delaware that is authorized to conduct business in the State of New York and refer all questions of law to this Honorable Court.

SIXTH: Deny based on information and belief as to the truth of any of the allegations contained in paragraphs "6", "7", "8", "9", "11", "12" and "13" of the plaintiff's complaint except to admit that on March 6, 2011 Edward Luckey operated a motor vehicle bearing Illinois license plate number P514944 that was owned by YRC INC., in the course of his employment that was involved in an accident at or near the intersection of Page Place and Maspeth Avenue, County of Queens, State of New York and refer all questions of law to this Honorable Court.

AS AND FOR A FIRST SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

SEVENTH: That whatever damages, personal injury, injury to property, or wrongful death plaintiff(s) and/or plaintiff's decedent may have sustained, if any, at the time and place alleged in the Complaint herein, or any amendments thereto, if not caused in whole by the carelessness, negligence, assumption of risk and culpable conduct of the plaintiff(s) and/or plaintiff's decedent, were then caused by the carelessness, negligence, culpable conduct and want of care on the part of the plaintiff(s) and/or plaintiff's decedent; and if any carelessness, negligence or culpable conduct upon the part of defendant(s) caused or contributed to such injury or wrongful death and damages of plaintiff(s) and/or plaintiff's decedent, such on the part of defendant(s) bore only a slight proportion to the entire negligence and culpable conduct attributable to both plaintiff(s) and/or plaintiff's decedent in causing the accident and any damages sustained.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

EIGHTH: That by entering into the activity in which the plaintiff, PATRICIO BORJA, was engaged at the time of the occurrence set forth in the Verified Complaint, said plaintiff knew the hazards hereof and the inherent risks incident thereto and had full knowledge of the dangers thereto; that whatever injuries and damages were sustained by the plaintiff herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff in his/her activities and such risks were assumed and accepted by him/her in performing and engaging in said activities.

AS AND FOR A THIRD SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

NINTH: Plaintiff failed to take all reasonable measures to reduce, mitigate and/or minimize the damages alleged.

AS AND FOR A FOURTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

TENTH: Plaintiff('s/s') recovery, if any, shall be reduced by the amount of any collateral source payments received, in accordance with CPLR 4545.

AS AND FOR A FIFTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

ELEVENTH: If it is determined that the plaintiff(s), failed to use available seat belts, defendant(s), pleads said fact in mitigation of damages.

AS AND FOR A SIXTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

TWELFTH: That the Court has not obtained jurisdiction over the defendants, due to the lack of proper service upon said defendants.

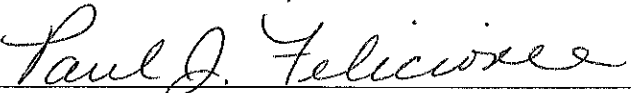
WHEREFORE, the defendant(s), YRC INC. I/S/H/A YRC, INC. AND
EDWARD LUCKEY, demand(s) judgment as follows:

(a) dismissing the Complaint herein, together with the costs and disbursements of
this action;

Dated: Hauppauge, New York
April 26, 2011

DESENA & SWEENEY, LLP

By:



PAUL J. FELICIONE, ESQ. (PF 7795)

Attorneys for Defendant(s)

YRC INC. I/S/H/A YRC, INC. AND
EDWARD LUCKEY

1383 Veterans Memorial Highway

Suite 32

Hauppauge, New York 11788

631-360-7333

File No.: 11YRC0011K

Claim No.: 341589

STATE OF NEW YORK, COUNTY SUFFOLK

The undersigned, an attorney admitted to practice in the Courts of New York State, shows: affirmant is PAUL J. FELICIONE, an attorney in the law firm of **DeSENA & SWEENEY, LLP.**, attorney of record for YRC INC. I/S/H/A YRC, INC. AND EDWARD LUCKEY, in the within action; affirmant has read the foregoing ANSWER and knows the contents thereof; the same is true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters affirmant believes it to be true. This verification is made by affirmant and not by YRC INC. I/S/H/A YRC, INC. AND EDWARD LUCKEY, in that they are not within the County where undersigned has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigations made relative to the subject matter, information and records, in his file.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: Hauppauge, New York
April 26, 2011


PAUL J. FELICIONE, ESQ. (PF 7795)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PATRICIO BORJA,

Plaintiff(s),

-against-

YRC, INC. and EDWARD LUCKEY,

Defendant(s).

**AFFIDAVIT
OF
MAILING**

Federal Index No.: 11 CV 1944

STATE OF NEW YORK, COUNTY OF SUFFOLK

Siobhan K. Geosits, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at Selden, New York.

On April 28, 2011 deponent served the within **VERIFIED ANSWER** upon the attorney(s) and/or the parties listed herein, at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in - a post office - official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Kenneth J. Ready & Associates
Attorney(s) for Plaintiff(s)
1565 Franklin Avenue, Third Floor
Mineola, NY 11501
(516) 741-6800


Siobhan K. Geosits

Sworn to before me this 28 day
of April, 2011


NOTARY PUBLIC

TARA F. MORAN
NOTARY PUBLIC
NO. 01MO6136415
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES: 11/7/2013

Index No. 11 CV 1944

Year 2011

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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Plaintiff(s),

-against-

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Defendant(s).

VERIFIED ANSWER

DESENA & SWEENEY, LLP

Attorneys at Law

Attorneys for YRC INC. AND EDWARD LUCKEY I/S/H/A YRC, INC.

1383 Veterans Memorial Highway, Suite 32

Hauppauge, New York 11788

(631) 360-7333

ATTORNEY CERTIFICATION

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions contained in the above referenced document(s) are not frivolous.

Dated: Hauppauge, New York
April 26, 2011


PAUL J. FELICIONE, ESQ. (PJF 7795)

Sir: Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
the within named Court on

duly entered in the office of the clerk of

, 20

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the Honorable
, one of the judges of the within named court at on , 20 at M.

To:

Yours etc.,

Kenneth J. Ready & Associates
Attorney(s) for Plaintiff(s)
1565 Franklin Avenue, Third Floor
Mineola, NY 11501
(516) 741-6800

DESENA & SWEENEY, LLP
Attorneys for
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